

Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Good Shepherd School)	File No. SLD-266044
Baltimore, Maryland)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: September 19, 2002

Released: September 20, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division (Division) is a Request for Review by Good Shepherd School (Good Shepherd), Baltimore, Maryland.¹ Good Shepherd seeks review of a funding decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying Good Shepherd's application for Funding Year 2001 discounts under the schools and libraries universal service mechanism.² For the reasons set forth below, the Request for Review is granted, and the application is remanded to SLD for further review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³

¹ Letter from Maggie McCarty, Good Shepherd School, to Federal Communications Commission, filed February 27, 2002 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). Previously, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now known as Funding Year 2000, and so on.

³ 47 C.F.R. §§ 54.502, 54.503.

The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Applicants may file their FCC Form 471 manually or electronically.⁷ In order to have successfully completed the submission of the FCC Form 471 application in Funding Year 2001, applicants who filed electronically must also have completed and mailed to SLD the Item 21 description of services, and a paper copy of the Block 6 Certification, completed and signed, by the close of the filing window.⁸

4. SLD denied Good Shepherd's Funding Year 2001 application in its entirety because it found that, for each funding request, the application was "signed and/or submitted prior to the expiration of the 28-day waiting period from the day of the posting of the Form 470 to the SLD Web site."⁹ Specifically, it found that the application had been submitted on January 17, 2001.¹⁰ It is undisputed that earliest date of submission given the FCC Form 470 on which Good Shepherd relied was January 18, 2001.¹¹

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

⁵ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

⁷ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions), at 4-5.

⁸ Block 6 is the section of the FCC Form 471 where applicants must sign the form and make certifications required under program rules. FCC Form 471, Block 6.

⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Maggie McCarty, Good Shepherd School, dated July 23, 2001, at 7-8.

¹⁰ *Id.* at 1.

¹¹ See FCC Form 470, Good Shepherd School, App. No. 108330000337768, filed December 21, 2000 (noting earliest allowable contract date of January 18, 2001).

5. Good Shepherd filed an appeal with SLD.¹² It stated that, after receiving the Funding Commitment Decision Letter, it had contacted SLD for further explanation and had been told that it had filed electronically on January 17, 2001, one day short of the end of the 28-day waiting period.¹³ Good Shepherd asserted that it had been aware that it could not file until January 18, 2001 and further asserted that, although it could not prove that it did not file electronically on January 17, 2001, it was not Good Shepherd's intent to file on that day.¹⁴ Specifically, it offered several exhibits as evidence that it was still considering new bids on January 18, 2001 and that it completed and *manually* filed an FCC Form 471 on this date.¹⁵ These exhibits included (1) a letter written from Maggie McCarty, a Good Shepherd employee, to colleagues, dated January 19, 2001, noting that the application was completed on January 18, 2001; (2) a receipt for an Airborne Express shipment to SLD signed by Good Shepherd staff on January 18, 2001, and an Airborne Express record indicating a pickup, allegedly of Good Shepherd's FCC Form 471, on January 18, 2001 and delivery to SLD on January 19, 2001; (3) a copy of the FCC Form 471 signature page, dated January 18, 2001; (4) an e-mail dated January 17, 2001 indicating that Good Shepherd was still considering bids on that day, with the anticipation of a final decision at a meeting on January 18, 2001; and (5) an e-mail dated January 18, 2001 transmitting an electronic copy of Good Shepherd's FCC Form 471 to a Good Shepherd staff person for final review.¹⁶

6. On February 5, 2002, SLD denied the appeal in full.¹⁷ It found that the allowable contract date for all the funding requests was January 18, 2001, and that the FCC Form 471 had been electronically filed on January 17, 2001, and the certifications and attachments postmarked on the same day.¹⁸ Thus, it reaffirmed that Good Shepherd had not complied with the 28 day waiting period.¹⁹ Good Shepherd then filed the pending Request for Review. In the Request for Review, it asserts again that it submitted its application manually, not electronically, and that it did so on January 18, 2001, not January 17, 2001, and resubmits the evidence it provided to SLD.

7. After reviewing the record, we find that Good Shepherd signed and submitted its application, certification and attachments on January 18, 2001, not January 17, 2001. First, the record demonstrates that Good Shepherd's application was submitted manually, not

¹² Letter from Maggie McCarty, Good Shepherd Center, to Schools and Libraries Division, Universal Service Administrative Company, filed August 6, 2001 (Appeal to SLD).

¹³ *Id.* at 1.

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.*, Exhibits 1-5.

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Maggie McCarty, Good Shepard (sic) School, dated February 5, 2002 (Administrator's Decision on Appeal).

¹⁸ *Id.* at 1-2.

¹⁹ *Id.* at 2.

electronically, and that it was received by SLD on January 19, 2001.²⁰ Thus, SLD's conclusion that the application was electronically filed before the allowable contract date is incorrect. Whether Good Shepherd complied with the competitive bidding rules thus depends solely on whether its manually filed application was signed and postmarked on January 18, 2001, as Good Shepherd asserts, or January 17, 2001, as SLD found.

8. In this case, the signature date on Good Shepherd's Block 6 is January 18, 2001.²¹ However, the postmark date on the accompanying envelope does not appear to be legible. Under this circumstance, we have held that SLD may treat the filing date of an application in accordance with its standard processing procedures absent clear evidence proving that the application was mailed on a certain date.²²

9. Here, we find that Good Shepherd provided sufficiently clear evidence to prove that the application, with certifications and attachments, was signed and submitted on January 18, 2001. We base this conclusion on all the evidence in the record, including the Airborne Express record indicating pickup on January 18, 2001 and delivery to SLD on January 19, 2001, the undisputed fact that the FCC Form 471 was manually received on January 19, 2001, the fact that the FCC Form 470 was received by SLD much earlier (and thus cannot have been the document associated with the January 19, 2001 Airborne Express receipt), the signature date on the Airborne Express receipt, the January 18, 2001 signature date on the certifications, and a January 18, 2001 date stamp present on the print-out of certain pages of Good Shepherd's attachments.²³ We therefore find that Good Shepherd did not violate the 28-day bidding period.

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Good Shepherd School, Baltimore, Maryland, on February 27, 2002 IS GRANTED and this application is REMANDED to SLD for further review.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

²⁰ See FCC Form 471, Good Shepherd School, NEC.471.01-19-0105500577 (Good Shepherd Form 471).

²¹ *Id.*

²² See *Request for Review by Jaffrey-Ringe Cooperative School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-257632, CC Dockets No. 96-45 and 97-21, Order, DA 02-1227 (Wireline Comp. Bur. May 23, 2002).

²³ See *supra*, note 16; FCC Form 470, Good Shepherd Schools, filed December 21, 2000; Good Shepherd Form 471, Attachments.